

Notice of Allowability

Application No.

09/685,850

Applicant(s)

PEFFLY ET AL.

Examiner

Art Unit

Lakshmi S. Channavajjala

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11-22-2004.
2. ☒ The allowed claim(s) is/are 1-13, 15-33, 35-46 and 53-69.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 11-22-04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

PD

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel claims 14 and 34.

Amend claims 1, 21, 41, 53 and 62 as follows:

1. A scalp cosmetic composition comprising:

a) from about 40% to about 99% by weight of a volatile liquid having a vapor pressure greater than 23.7 mmHg as measured at 25°C, and

b) from about 0.005% to about 20% by weight of a skin active agent,

c) from about 0.1% to about 20% by weight of a liquid humectant,

wherein the composition is a leave-on composition that is substantially free of cleansing surfactants and wherein the composition is contained within an applicator having a plurality of openings through which the composition is applied directly to the scalp.

21. A method of treating the scalp, said method comprising:

a) applying directly to the scalp a cosmetic composition that is substantially free of cleansing surfactants and which contains:

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- i) from about 40% to about 99% by weight of a volatile liquid having a vapor pressure greater than 23.7 mmHg as measured at 25°C, and
 - ii) from about 0.005% to about 20% by weight of a skin active agent,
 - iii) from about 0.1% to about 20% by weight of a liquid humectant,
- wherein the composition is contained within an applicator having a plurality of openings through which the composition is applied directly to the scalp, and
- b) allowing the applied composition to remain on the scalp for at least about 30 minutes after application.

41. A method of treating animal skin, said method comprising:

- a) applying directly to the scalp a cosmetic composition that is substantially free of cleansing surfactants and which contains:
 - i) from about 40% to about 99% by weight of a volatile liquid having a vapor pressure greater than 23.7 mmHg as measured at 25°C, and
 - ii) from about 0.005% to about 20% by weight of a skin active agent,
 - iii) from about 0.1% to about 20% by weight of a liquid humectant,wherein the composition is contained within an applicator having a plurality of openings through which the composition is applied directly to the scalp, and
- b) allowing the applied composition to remain on the scalp for at least about 30 minutes after application.

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53. A scalp cosmetic composition comprising:

a) from about 40% to about 99% by weight of a volatile liquid having a vapor pressure greater than 23.7 mmHg as measured at 25°C, and

b) from about 0.005% to about 20% by weight of a skin active agent,

c) from about 0.1% to about 20% by weight of a liquid humectant,

wherein the composition is a leave-on composition that is substantially free of cleansing surfactants and wherein the composition is contained within an applicator having a plurality of openings through which the composition is applied directly to the scalp, and provides a Scalp Moisturization value of at least about 2.5.

62. A scalp cosmetic composition comprising:

a) from about 40% to about 99% by weight of a volatile liquid having a vapor pressure greater than 23.7 mmHg as measured at 25°C, and

b) from about 0.005% to about 20% by weight of a skin active agent,

c) from about 0.1% to about 20% by weight of a liquid humectant,

wherein the composition is a leave-on composition that is substantially free of cleansing surfactants and wherein the composition is contained within an applicator having a plurality of openings through which the composition is applied directly to the scalp, and provides an Instant Flake Reduction value of at least about 40%.

The following is an examiner's statement of reasons for allowance:

Instant claims are directed to a scalp composition and a method of treating scalp by applying a composition comprising a volatile liquid having a vapor pressure greater than 23.7 mm Hg, a skin care active and a humectant, wherein the composition is free of cleansing surfactants and the composition is present in an applicator that has plurality of openings through which the composition is directly applied to scalp. Instant claims are distinct from the prior art of record in that the composition is applied directly to the scalp. The prior art of record, particularly Matson et al U.S. Patent No. 2,624,348 teaches an applicator with plurality of openings. Given the reasoning advanced by the Board of Appeals and Interferences that the instant claims require direct application of the composition to the scalp, Matson fails to teach direct application to the scalp because the openings in the applicator of Matson contain a sponge or foam plug at the tip that prevents the composition from flowing directly to the scalp. Thus, the composition of Matson is applied in a 2-step process, which does not meet the claimed requirement of being applied directly to the scalp. Accordingly, the instant claims are unobvious over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Prior art search revealed a French patent (FR 2799621), which teaches a hair treating comb for applying hair coloring, waving and conditioning compositions.


However, the comb releases the composition on to the hair by being parallel to the scalp but not directly to the scalp. Thus, instant composition is distinguished over the prior art by being directly applied to the scalp.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lakshmi S Channavajjala
Examiner
Art Unit 1615
April 25, 2005


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